

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 314

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Environmental Preservation and Conservation Committee; and Senator Simpson

SUBJECT: Petroleum Restoration Program

DATE: April 20, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gudeman</u>	<u>Uchino</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Howard</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 314 revises certain provisions of the Petroleum Restoration Program. Specifically, the bill:

- Expands the eligibility requirements of the Abandoned Tanks Restoration Program (ATRP);
- Specifies that sites participating in the Petroleum Cleanup Participation Program (PCPP) are not eligible for the ATRP;
- Removes the provision that a property owner must provide evidence that he or she had a complete understanding of the previous ownership and use of the property prior to acquiring the property;
- Removes the exclusion eligibility for sites which are owned by a person who had knowledge of the polluting condition when title was acquired;
- Changes the name of the “low-scored site initiative” (LSSI) to the “low-risk site initiative” (LRSI) and revises the criteria that must be met to participate in the LRSI;
- Increases the amount of money that may be encumbered from the Inland Protection Trust Fund each year to fund the LRSI from \$10 million to \$15 million, and increases the funding limit per site from \$30,000 to \$35,000;
- Removes the reporting deadline for sites to participate in the PCPP;
- Decreases the number of sites that may be bundled and eligible to compete for performance based contracts under the Advanced Cleanup Program from 20 to 10;

- Increases the annual funding cap from \$15 million to \$25 million for the Advanced Cleanup Program; and
- Allows a property owner or responsible party to enter into a voluntary cost share agreement for bundling multiple sites and specifies the sites are not subject to the agency term contractor assignment pursuant to rule.

The amended eligibility requirements for the ATRP and the PCPP are projected to have an increased recurring cost of \$6 million and a \$14 million nonrecurring cost to the Inland Protection Trust Fund within the Department of Environmental Protection (DEP). Senate Bill 2500, the Senate's Fiscal Year 2015-2016 General Appropriations Bill, provides \$110 million from the Inland Protection Trust Fund within the DEP for the Petroleum Tanks Cleanup Program, in addition to base operational funding. The bill would increase program costs.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Restoration of Petroleum Contaminated Sites

The Division of Waste Management within the Department of Environmental Protection (DEP) regulates underground and aboveground storage tank systems. In 1983, Florida became one of the first states to pass legislation and adopt rules to regulate underground and aboveground storage tanks.¹ Leaking storage tanks pose a significant threat to groundwater quality, and Florida relies on groundwater for about 92 percent of its drinking water needs.²

As of February 25, 2015, 8,378 discharges have been closed since the program began in 1986. There are approximately 5,011 discharges undergoing some phase of remediation and 5,074 discharges that are waiting for remediation. Site rehabilitation funding is based on the available budget and the priority score. The score for each site ranges from five to 115, with five representing a very low potential threat to human health and the environment and 115 representing a substantial potential threat. The DEP is currently funding the remediation of discharges that score 30 or above. The total number of sites that are currently eligible for state funding varies as sites are closed out and new sites are added to the program.³

State Underground Petroleum Environmental Response Act

In 1986, the Legislature passed the State Underground Petroleum Environmental Response Act (SUPER Act) to address the problem of pollution from leaking underground petroleum storage systems. The SUPER Act authorized the DEP to establish criteria for the prioritization, assessment, cleanup, and reimbursement for cleanup of contaminated sites. The SUPER Act also created the Inland Protection Trust Fund, which is funded by a tax on petroleum products imported or produced in Florida, and serves as a repository for the various petroleum contamination cleanup programs. The SUPER Act established the Early Detection Incentive

¹ See ch. 83-310, Laws of Fla.

² DEP, *Storage Tank Compliance*, <http://www.dep.state.fl.us/waste/categories/tanks/> (last visited Mar. 9, 2015).

³ DEP, *Senate Bill 314 Agency Analysis*, 3, (Jan. 20, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

Program, which provided site owners with the option of conducting the cleanup themselves and then receiving reimbursement from the Inland Protection Trust Fund, or having the state conduct the cleanup in priority order.⁴

Petroleum Liability Insurance Program

In 1988, the Legislature created the Petroleum Liability Insurance Program (PLIP) to provide third-party liability insurance to qualified program participants. The PLIP provided up to \$1 million of liability insurance for each incident of petroleum contamination.⁵ The program was revised in 1989 and renamed to the Petroleum Liability Insurance and Restoration Program (PLIRP). The PLIRP allowed eligible petroleum facilities to purchase \$1 million in pollution liability protection from a state contracted insurer and provided \$1 million worth of site restoration coverage through reimbursement or state-funded cleanup.⁶

Abandoned Tank Restoration Program

In 1990, the Legislature established the Abandoned Tank Restoration Program (ATRP). The ATRP was created to address the contamination at facilities that had out-of-service or abandoned tanks as of March 1990. The ATRP originally had a one-year application period, but the deadline was subsequently extended to 1992, then 1994. In 1996, the Legislature waived the deadline indefinitely for owners who are unable to pay for the closure of abandoned tanks. To be eligible for the ATRP, applicants must certify that the petroleum system has not stored petroleum products for consumption, use, or sale since March 1, 1990.⁷ There are currently 4,084 eligible ATRP discharges and 2,078 discharges have been remediated.⁸

The Reimbursement Program

The Legislature began to phase out the state's role in the cleanup process in 1992 by shifting the cleanup of sites to the reimbursement program,⁹ which was funded by increasing the excise tax on petroleum and petroleum products.¹⁰ The reimbursement program proved costly, and within a few years the reimbursement amount exceeded the administrative capacity of the DEP and the financial resources of the Inland Protection Trust Fund. By 1996, over 18,000 petroleum sites had been identified as contaminated and the program had accumulated \$551.5 million in outstanding reimbursement claims.¹¹

In 1995, the Legislature passed a temporary measure to address the large backlog of reimbursement applications and unpaid claims and required a review of the petroleum

⁴ Section 376.3071, F.S.

⁵ Section 376.3072, F.S.

⁶ Chapter 89-188, Laws of Fla.

⁷ Section 376.305, F.S.

⁸ DEP, *Senate Bill 314 Agency Analysis*, 3, (Jan. 20, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

⁹ The term "cleanup sites" includes contaminated sites that are being remediated by the state or the property owner.

¹⁰ Chapter 92-30, Laws of Fla.

¹¹ Comm. on Environmental Preservation and Conservation, the Florida Senate, *Underground Petroleum Storage Tank Cleanup Program*, (Interim Report 2005-153) (Nov. 2004).

underground storage tanks program. The measure only funded the remediation of sites that had received prior notice from the DEP.¹²

Petroleum Preapproval Program

The Petroleum Preapproval Program was implemented by the Legislature in 1996 in order to address the backlog of reimbursement applications and excessive costs to the Inland Protection Trust Fund.¹³ The program required state-funded cleanup of sites to be done on a preapproved basis, in priority order, and within the current fiscal year's budget. The program also required the DEP to use risk-based correction action (RBCA, pronounced "Rebecca") principles in the cleanup criteria rule. The DEP preapproved all cleanup costs for performance based contracts using competitive bid procedures or negotiated contracts.

Advanced Cleanup Program

The Advanced Cleanup Program (ACP) was also created in 1996 to allow property owners or responsible parties the opportunity to pay a portion of the cleanup costs in order to bypass the priority ranking list. The ACP requires applicants to provide at least 25 percent of the total cleanup costs and requires the property owner to prepare limited scope assessments at their expense.¹⁴

Section 376.30713(4), F.S., authorizes the DEP to enter into advanced cleanup contracts for up to \$15 million each fiscal year and limits the amount a facility may receive to \$5 million per year. A facility includes multiple site facilities such as airports, ports, or terminal facilities.¹⁵ Applications are submitted to the DEP twice a year (between May 1 and June 30 and between November 1 and December 31). The applications are ranked based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant that proposes the highest percentage of its share of costs.¹⁶

Petroleum Cleanup Participation Program

The Petroleum Cleanup Participation Program (PCPP) was also created in 1996 for sites that had missed the opportunity for state funding assistance but had reported contamination before 1995. Responsible parties in the PCPP cost share in the cleanup and prepare a limited scope assessment at their expense. Sites that qualify for this program are eligible for \$400,000 in rehabilitation funding and the owner, operator, or responsible party is required to pay 25 percent of the costs. The copayment amount may be reduced depending on the financial ability of the owner, operator, or responsible party.¹⁷ There are currently 1,727 PCPP eligible discharges.¹⁸

¹² Chapter 95-2, Laws of Fla.

¹³ Chapter 96-277, s. 6, Laws of Fla.

¹⁴ Section 376.30713, F.S.

¹⁵ Section 376.30713(4), F.S.

¹⁶ Section 376.30713(2), F.S.

¹⁷ Section 376.3071(13), F.S.

¹⁸ DEP, *Senate Bill 314 Agency Analysis*, 3, (Jan. 20, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

Revisions to the Petroleum Restoration Program

The Petroleum Restoration Program was amended in 1999 by HB 2151 to provide up to \$5 million in funding for certain source removal activities in advance of the priority ranking. The DEP was directed to select five low-scoring sites in the petroleum preapproval program for an innovative pilot program. The measure also extended the ACP beyond October 1, 1999.

Section 376.30714, F.S., was created in HB 2151 to address contamination on a site with eligible discharges (reported by December 31, 1998) and ineligible discharges (reported on or after January 1, 1999). Discharges that are reported on or after January 1, 1998, are not only ineligible for state funding, but are also not eligible for PLIRP. The inability to scientifically distinguish old discharges from new discharges results in eligible and ineligible discharges at a single location. The measure authorizes the DEP to address such instances through negotiated site rehabilitation agreements. The site rehabilitation agreements include a Limited Contamination Assessment Report; the allocation of funding between the state and the responsible party, owner, or operator; the proof of financial responsibility of the owner, operator, or responsible party; and the establishment of the cleanup priority of the site. Any discharges reported by December 31, 1998, remain subject to the program requirements for which it is eligible.

The Legislature substantially amended the Petroleum Restoration Program in 2005 to require:

- All of Florida's underground petroleum storage tanks be upgraded prior to January 1, 2010;
- The DEP to establish a process to uniformly encumber funds appropriated for the petroleum preapproval program throughout a fiscal year;
- The DEP to establish priorities based on a scoring system;
- Funding for limited, interim soil-source removals for sites that become inaccessible for future remediation due to road infrastructure and right-of-way restrictions resulting from pending Florida Department of Transportation (FDOT) projects;
- Funding for limited, interim soil-source removals associated with the underground petroleum storage system upgrade that are conducted in advance of the site's priority ranking for cleanup;
- Limited funding to ten sites per fiscal year per owner for source removal associated with the underground petroleum storage system upgrade;
- Limited funding for interim source removal activities at the FDOT projects to up to ten percent of the total source removal costs and funds may only be used for soil assessment, soil screening, soil removal, backfill material, treatment or disposal of contaminated soil, and dewatering;
- Limited funding of \$1 million per fiscal year for the FDOT projects, and \$10 million per fiscal year for underground petroleum storage system upgrade projects;
- Repeal of funding provisions by June 30, 2008;
- Availability of the Preapproved Advanced Cleanup Participation Program for discharges that are eligible for restoration funding under the PCPP provided the applicants includes a cost-sharing commitment in addition to the 25 percent copayment requirement for the PCPP; and
- An extension of the life of the Inland Protection Financing Corporation from 2011 to 2025, and that the corporation issue notes and bonds, and pay for large-scale cleanups such as ports, airports, and terminal facilities that are eligible for state funding.¹⁹

¹⁹ Sections 376.3071, 376.30713, 376.3075, and 376.30715, F.S.

Low-Scored Site Initiative

The low-scored site initiative (LSSI) was created in 2010 to allow property owners with low scoring sites to voluntarily participate the Petroleum Restoration program. To qualify for the LSSI, the following site conditions are required:

- A priority score of 29 or less;
- Excessively contaminated soil from petroleum products is not present;
- Six months of groundwater monitoring that demonstrate the plume is shrinking or stable;
- Adjacent surface water, including its effects on human health and the environment, is not affected;
- The area containing the contamination must be less than one-quarter acre and confined to the source property boundaries; and
- Soil contamination subject to human exposure at the surface and two feet below the land surface meets the appropriate cleanup target levels.

A property that qualifies for state funding may receive up to \$30,000 to conduct a site assessment and six months of groundwater monitoring. Funding for the LSSI is limited to \$10 million for a fiscal year and is made available on a first come, first served basis. A property owner that chooses to participate in the LSSI is limited to ten sites per fiscal year.

Once the LSSI criteria in s. 376.3071(12)(b)1., F.S., is confirmed for a site, the DEP must issue either a No Further Action, indicating the contamination is minimal and of no risk, or a site rehabilitation completion order, indicating there is no contamination remaining.

In 2013, the Legislature amended s. 376.30711, F.S., to require all task assignments, work orders, and contracts for providers under the preapproval program be procured through competitive bidding pursuant to ss. 287.056, 287.057, and 287.059, F.S., after June 30, 2014.²⁰

The Fiscal Year 2013-2014 General Appropriations Act appropriated \$125 million to the DEP for the rehabilitation of eligible petroleum contaminated sites. The act directed that up to \$50 million be appropriated to fund petroleum rehabilitation task assignments, work orders, and contracts entered into prior to June 30, 2013. The remaining \$75 million was placed in reserve and was contingent upon submission of a plan for consideration by the Legislative Budget Commission (LBC) detailing how the DEP would improve the effectiveness and efficiency of the Petroleum Restoration program. In addition, no funds could be released after January 1, 2014, unless the DEP adopted rules to implement ss. 376.3071, 376.30711, and 376.30713, F.S. The DEP's plan was approved by the LBC on September 12, 2013, and rules were adopted on December 27, 2013.²¹ The remaining \$75 million in appropriation was released in March 2014.²²

²⁰ Chapter 2013-41, s. 29, Laws of Fla.

²¹ The Statement of Estimated Regulatory Cost (SERC) prepared by the DEP to implement Rules 62-772.300 and 62-772.400, F.A.C determined the rules required ratification by the legislature. The majority of the cost requirements outlined by the DEP in the SERC were costs already incurred by contractors as the cost to conduct business. However, the existing requirements were being restated in rule, thereby requiring legislative ratification during the 2014 Legislative Session (ch. 2014-149, Laws of Fla).

²² Chapter 2013-40, Laws of Fla.

In 2014, the Legislature passed CS/HB 7093 to substantially amend the Petroleum Restoration program by repealing the Petroleum Preapproval program in s. 376.30711, F.S., deleting obsolete provisions related to the reimbursement program, requiring competitive procurement procedures for clean-up contracts, and revising clean-up contractor qualifications.

Section s. 376.3071, F.S., was amended to include the following:

- State-funded cleanup sites are funded pursuant to the provisions of the Petroleum Restoration program in ss. 376.3071, F.S., 376.305(6), 376.3072, and 376.3070, F.S.;
- A facility owner must abate the source of discharge for a release that occurred after March 29, 1995, and notify the DEP if free product is present;
- Clean-up contracts for contamination sites in the Petroleum Rehabilitation program must be procured pursuant to the competitive procurement requirements in chapter 287, F.S., or the rules adopted under ss. 376.3071 and 287.0595, F.S., and invoices must be paid pursuant to s. 215.422, F.S.;
- Site assessment and remediation contractors must certify to the DEP that they:
 - Comply with applicable Occupational Safety and Health Administration regulations;
 - Maintain workers compensation insurance;
 - Maintain comprehensive general liability and comprehensive automobile liability insurance;
 - Maintain professional liability insurance;
 - Have the capacity to perform or directly supervise the majority of the rehabilitation work pursuant to s. 489.113(9), F.S.
- The rules implementing s. 376.3071, F.S., must:
 - Specify that only qualified contractors may submit responses on competitive solicitation;
 - Include procedures for rejection of vendors that do not meet the minimum qualifications; and
 - Include the requirements from the vendor to maintain its qualification.
- A site owner or operator, or its designee, is prohibited from receiving remuneration in cash or in kind, directly or indirectly from a contractor performing site cleanup activities; and
- Allows the DEP to seek recovery of overpayment as a result of the findings of an audit.

Section 376.30713, F.S., was amended to allow an applicant to participate in the ACP under a performance-based contract for the cleanup of at least 20 sites. The applicant must commit to pay 25 percent or more of the costs of cleanup. In order to meet the requirements of the cost-share agreement, the applicant may commit to pay, demonstrate a cost savings to the state, or use a combination of the two. The percentage of cost savings must be included in the application and compared to the cost of cleanup of the same sites using the current rates provided to the DEP by the agency term contractor. The DEP must determine if the cost savings demonstration is acceptable, which is not subject to ch. 120, F.S.

Competitive Solicitation of Contractual Services

Prior to 2014, the DEP did not regularly use competitive bid procedures or negotiated contract procedures under ch. 287, F.S., even though the DEP was authorized to use them.

State agencies that competitively solicit contractual services are subject to the provisions in s. 287.057, F.S., which include:

- For contractual services that exceed \$35,000, the competitive solicitation must:
 - Be available to all vendors;
 - Include the time and date for the receipt of bids, proposals, or replies, and of the public opening;
 - Include the contractual terms and conditions applicable to the procurement and the criteria used to determine acceptability and merit of the bid;
 - Be subject to the invitation to bid process when the agency is able to define the scope of work and establish the specifications of the services needed;
 - Be subject to the request for proposal process when the purpose of the services needed can be defined and the agency can identify the deliverables; and
 - Be subject to the invitation to negotiate process when the agency must determine the best method for achieving the specific goal and more than one vendor is able to provide the services.
- Requiring contractual services that exceed the \$35,000 threshold to be procured through competitive sealed bids, competitive sealed proposals, or competitive sealed replies, unless:
 - The agency head determines there is an immediate danger to public health, safety, or welfare; and
 - The agency purchases the services from a state procured contract that was contracted by another agency pursuant to s. 287.057(1), F.S.²³

Agency Term Contracts

Rule 62-772, F.A.C., directs the DEP to enter into multiple agency term contracts to retain contractors to conduct petroleum site rehabilitation services for a specific task assignment.²⁴ The agency term contract specifies that all site rehabilitation activities that cost more than \$195,000 will be procured by quotes from all eligible agency term contractors in the region where the site is located. For site rehabilitation activities that cost less than \$195,000, the DEP will directly assign the task to an agency term contractor using the Relative Capacity Index (RCI) algorithm. The RCI provides an unbiased, cost effective mechanism for assigning tasks to the agency term contractors.²⁵ As of March 2014, the DEP has competitively procured 70 agency term contractors that are divided into three regions around the state.

Performance Based Contracts

The DEP may issue performance based contracts to approved agency term contracts for sites that may be remediated in an aggressive, cost effective, efficient manner. Performance based contracts are negotiated based on quotes for the total cost of cleanup, technology and design, remediation milestones, site closure options, time to complete remediation, and the total cost paid for the completion of each milestone. Performance based contracts are considered for:

- Sites procured through RCI assignment in which the current agency term contractor would like to continue through a performance based contracts;
- Sites that are unassigned or require RCI assignment;

²³ See s. 287.057, F.S.

²⁴ Chapter 62-772.200(b), F.A.C., defines an agency “term contract” as “an agreement between the DEP and a vendor whereby the vendor agrees to provide an indefinite quantity of commodities or contractual services, on an indefinite delivery schedule, over a specified period of time.”

²⁵ The DEP, Agency Term Contractor Selection Process, *RCI flow chart*, available at http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/RCI_final_19Dec14.pdf (Mar. 9, 2015).

- Sites that have been in natural attenuation monitoring for over four years that show minimal progress toward closure;
- Bundled sites based on phase and/or location; and
- Sites with a restrictive funding cap amount.²⁶

Risk-Based Corrective Action

Section 376.3071, F.S., was amended in 1996 to require the DEP to adopt rules for risk-based corrective action (RBCA) principles for the rehabilitation of contaminated petroleum sites. The RBCA process uses a tiered approach that couples site assessment and response actions with human health, public safety, and environmental risk assessment to determine the extent and urgency of corrective action used in remediating contaminated sites. Alternative cleanup target levels,²⁷ institutional²⁸ and engineering controls,²⁹ and remediation by natural attenuation³⁰ are RBCA strategies used on a case-by-case basis and allow the DEP to use cost-effective and effective remediation measures in lieu of conventional cleanup technologies. RBCA is endorsed by the U.S. Environmental Protection Agency and is implemented in all 50 states for the remediation of contaminated sites.³¹

The use of RBCA has expanded to the state's dry cleaning site remediation program under s. 376.3078, F.S., the brownfields program under s. 376.81, F.S., and all other contaminated sites under s. 376.30701 F.S. The RBCA provisions in s. 376.30701, F.S., do not include the petroleum restoration, brownfields, and dry cleaning programs because they are subject to their own RBCA provisions in statute.

The Florida RBCA process includes the following components:

- The one in one million cancer risk for carcinogenic constituents;
- A hazard index of one for non-carcinogenic constituents in the development of cleanup target levels for groundwater, surface water, and soil;
- Relocating a compliance point away from the contamination source area to the edge of the plume or property boundary to allow for natural attenuation; and

²⁶ The DEP, Performance Based Cleanup-General Information, *available at* http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/announcements/NOIPP-PBC-Info-Sheet.docx (last visited Mar. 9, 2015).

²⁷ Section 37.301(7), F.S., defines "cleanup target levels" as "the concentration for each contaminant identified by an applicable analytical test method, in the medium of concern, at which a site rehabilitation program is deemed complete."

²⁸ Section 376.301(21), F.S., defines "institutional control" as "the restriction on use or access to a site to eliminate or minimize exposure to petroleum products' chemical of concern, dry cleaning solvents, or other contaminants. Such restrictions may include, but are not limited to, deed restrictions, restrictive covenants, or conservation easements."

²⁹ Section 376.301(16), F.S., defines "engineering controls" as "modifications to a site to reduce or eliminate the potential for exposure to petroleum products' chemicals of concern, dry cleaning solvents, or other contaminants. Such modifications may include, but are not limited to, physical or hydraulic control measures, capping, point of use treatments, or slurry walls."

³⁰ Section 376.301(24), F.S., defines "natural attenuation" as a "verifiable approach to site rehabilitation that allows natural processes to contain the spread of contamination and reduce the concentrations of contaminants in contaminated groundwater and soil. Natural attenuation processes may include the following: sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization."

³¹ EPA, *Use of Risk-Based Decision-Making in UST Corrective Action Programs, OSWER Directive 9610.17* (Mar., 1995) <http://epa.gov/swerust1/directiv/od961017.htm> (last visited Mar. 9, 2015).

- Eliminating or minimizing human exposure to the contamination site by using institutional and engineering controls.

Funding and Improvements to the Petroleum Restoration Program

The Petroleum Restoration program was appropriated \$110 million for the 2014-2015 fiscal year. The DEP reports that as of March 9, 2015, approximately \$30 million has been invoiced and the balance remaining is approximately \$80 million. The DEP expects to invoice approximately \$30 million by the end of the current fiscal year and \$50 million will be certified forward to 2015-2016 fiscal year.

The state has realized an overall costs savings since the Petroleum Restoration program was transitioned to the competitive procurement requirements in ch. 287, F.S., or the rules adopted under ss. 376.3071 and 287.0595, F.S. The site assessment and engineering design costs are 10 percent less, the groundwater monitoring costs are 19 percent less, and operation and maintenance costs of remedial systems are 11 percent less. The average cost savings for the remediation of discharges in the Advanced Cleanup Program is 32.7 percent.

The DEP reports that 99.9 percent of high risk exposure facilities are in active remediation or assessment, and 100 percent of facilities in the moderate risk category are in active remediation or assessment. The DEP also reports that the average procurement time under the new system is three to five weeks, which is comparable to processing time prior to the system overhaul.

III. Effect of Proposed Changes:

Section 1 amends s. 376.305, F.S., to expand the Abandoned Tank Restoration Program (ATRP) program by removing the reporting deadline, which currently separates eligible from ineligible sites. The expansion of the program will provide state funding eligibility for remediation of a large but indeterminate number of discharges.

The bill specifies that a site in the Petroleum Cleanup Participation Program (PCPP) may not participate in the ATRP.

The bill removes the provision that a property owner of a site in the ATRP must provide evidence that he or she had a complete understanding of the use of the property prior to acquisition.

The bill removes the exclusion eligibility for sites which are owned by a person who had knowledge of the polluting condition when title was acquired, unless the person acquired title to the site after issuance of a notice of site eligibility by the Department of Environmental Protection (DEP).

Section 2 amends 376.3071, F.S., changing the name of the “low scored site initiative” to the “low-risk site initiative” (LRSI). The bill requires a property owner or a responsible party who wishes to participate in the LRSI to provide evidence of authorization from the property owner.

To participate in the LRSI, the bill requires a property owner or responsible party to submit a “No Further Action” proposal that demonstrates the required criteria are met and revises the criteria in the following manner:

- Removes the requirement that a contaminated site must have a priority ranking score of 29 points or less;
- Provides a more specific standard for the prohibition on the presence of excessively contaminated soil on the site. Specifically, soil saturated with petroleum or petroleum products, or soil that causes a total corrected hydrocarbon measurement of 500 parts per million (ppm) or higher for the Gasoline Analytical Group or 50 ppm or higher for the Kerosene Analytical Group, as defined by the DEP rule 62-780.900, F.A.C., must not exist onsite as a result of a release of petroleum products;
- Specifies that the requirement that contamination remaining at the site does not adversely affect adjacent surface waters includes the effects of those waters on human health and the environment;
- Removes the requirement that the area of groundwater contamination is less than one-quarter acre;
- Allows the presence of groundwater containing petroleum products’ chemicals of concern that is not confined to the source property boundaries if it only migrates to a transportation facility of the FDOT; and
- Adds a requirement that the groundwater contamination containing the petroleum products’ chemicals of concern is not a threat to any permitted potable water supply well.

If the DEP determines that the property owner or responsible party has demonstrated that these conditions are met, the DEP must issue a site rehabilitation completion order that incorporates the “No Further Action” proposal. This determination acknowledges that minimal contamination exists onsite and that such contamination is not a threat to the public health, safety, or welfare, water resources, or the environment. If the DEP determines that a discharge for which a site rehabilitation completion order was issued may pose a threat to the public health, safety, or welfare, water resources, or the environment, the issuance of the site rehabilitation completion order does not alter eligibility for state-funded rehabilitation that would otherwise apply.

The bill authorizes the DEP to approve the cost of a limited remediation plan, in addition to the cost of the assessment authorized in current law, submitted by a property owner or responsible party if the DEP determines that the assessment and limited remediation will likely result in a no further action determination. The approval may be provided in one or more task assignments or modifications. The total amount authorized for a particular site may not exceed the threshold amount specified in chapter 287, F.S., for a Category Two purchasing category, which is currently \$35,000. This is an increase from the current LRSI funding limit of \$30,000. The bill authorizes the DEP to pay the costs associated with a professional land survey or specific purpose survey, if needed, and costs associated with obtaining a title report and recording fees.

The bill increases the amount of time within which assessment work must be completed from six months to nine months; however, if groundwater monitoring is required following the assessment in order to satisfy the LRSI conditions, the DEP may authorize an additional six months to complete the monitoring.

The bill also increases the annual amount of money that may be encumbered from the Inland Protection Trust Fund to fund LRSI from \$10 million to \$15 million.

The bill eliminates the December 31, 1998, reporting deadline for sites to participate in the PCPP.

Section 3 amends s. 376.30713, F.S., to revise the provisions of the Advanced Cleanup Program. The bill allows more owners, operators, or responsible parties to participate in the program by decreasing the number of sites that may be bundled and eligible to compete for performance based contracts from 20 to 10. To account for the additional participation in the program, the annual allocation is increased from \$15 million to \$25 million.

The bill allows a property owner or responsible party to enter into a voluntary cost share agreement for bundling multiple sites and to provide a list of the sites to be included in future bundles. The sites that will be included in a future bundle are not subject to agency term contractor assignment pursuant to rule. The DEP may terminate the voluntary cost share agreement if the application to bundle multiple sites is not submitted during the open application period. This provision will extend the period of time listed sites will be remediated because they are not subject to the agency term contractor assignment.

Section 4 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/SB 314 appears to have an indeterminate positive fiscal impact on the private sector because more rehabilitation contracts may be awarded as a result of increasing the total funding limits for Advanced Cleanup and the Low-Risk Site Initiative (LRSI).

C. Government Sector Impact:

The amended eligibility requirements for the Abandoned Tank Restoration Program (ATRP) and the Petroleum Clean Participation Program (PCPP) is estimated to have an increased recurring cost of \$6 million to the Inland Protection Trust Fund within the Department of Environmental Protection (DEP).

The fiscal impact on the DEP is indeterminate as a result of reducing the number of sites that must be bundled to be eligible to compete for performance-based contracts for the Advanced Cleanup Program from 20 to 10. However, the decreased bundled site requirement, together with the increased amount of available funds, should result in more sites being cleaned up sooner that could result in cost savings over time.

The bill increases the amount of funding that may be encumbered from the Inland Protection Trust Fund for the LRSI contracts from \$10 million to \$15 million and increases the annual allocation for the Advanced Cleanup Program contracts from \$15 million to \$25 million. However, these changes may not increase the DEP's overall annual appropriation for the Petroleum Restoration Program, but rather revise how much of the annual appropriation may be expended within these programs.

The DEP estimates the elimination of the reporting deadline for the PCPP to have a fiscal impact of approximately \$932,000 per year. The estimate assumes four sites per year will apply for the program with an average cost to remediate a site \$233,000. The DEP also estimates the cost to remediate the sites that did not participate in the program from 1999 to 2014 to be \$13,980,000. This estimate assumes that 60 sites may qualify for the program at a cost of \$233,000 to remediate each site.³²

Senate Bill 2500, the Senate's General Appropriations Bill for Fiscal Year 2015-2016, provides \$110 million from the Inland Protection Trust Fund within the DEP for the Petroleum Tanks Cleanup program, in addition to base operational funding. The bill increases costs for the program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 376.305, 376.3071, and 376.30713.

³² DEP, *Petroleum Restoration Fiscal Overview, Potential Fiscal Impact with Application Date Removal* (on file with the Senate Committee on Environmental Preservation and Conservation).

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Appropriations on April 16, 2015:**

The committee substitute:

- Eliminates the December 31, 1998, reporting deadline for sites to participate in the PCPP.
- Specifies that sites currently in the Petroleum Cleanup Participation Program (PCPP) are not eligible for the Abandoned Tanks Restoration Program (ATRP).
- Removes the provision from CS/SB 314 that allows a property owner to approve the use of risk-based corrective action (RBCA) principles in remediating a discharge;
- Removes the requirement from CS/SB 314 that site owners or the responsible party must approve conditional site closures, site closures with institutional or engineering controls, or work stoppages;
- Removes the requirement from CS/SB 314 that the DEP establish in rule a procedure to process invoices that are less than \$500,000 per task;
- Removes the provision from CS/SB 314 allowing the DEP to negotiate a contract based on the best available rate from a pool of three agency term contractors selected by the site owner or operator;
- Removes the requirement from CS/SB 314 that the agency term contractor and the property owner or responsible party must submit a sworn affidavit to the DEP that neither party has solicited, offered, accepted, paid, or received any compensation, remuneration, or gift of any kind in exchange for selection of the agency term contractor;
- Removes the requirement from CS/SB 314 that the agency term contractor must disclose a conflict of interest or potential conflict of interest to the DEP;
- Removes the provision from CS/SB 314 that specifies that only agency term contractors may participate in the low-scored site initiative (LSSI);
- Authorizes the DEP to approve the costs for limited remediation and up to six months of groundwater monitoring in one or more task assignment not to exceed the category two funding limiting in s. 287.017, F.S.;
- Authorizes the DEP to approve limited remediation for LRSI sites following an approved initial site assessment, not to exceed the category two funding limiting in s. 287.017, F.S.;
- Authorizes an additional six months of groundwater monitoring for LRSI sites if the DEP determines that additional groundwater monitoring is warranted;
- Maintains the \$400,000 funding cap in current law for the PCPP;
- Maintains the discharge date in current law of January 1, 1995 for the PCPP discharges;
- Changes the name of the “low scored site initiative” to “the low-risk site initiative”;
- Requires the property owner or responsible party participating in the LRSI to submit a “No Further Action” proposal to the DEP;
- Revises the criteria for participating in LRSI, including removing the requirement that a site must have a priority ranking score of 29 or less;

- Revises the criteria to issue a site rehabilitation order with a No Further Action proposal to include:
 - Soil saturated with petroleum or petroleum products, or soil that causes a total corrected hydrocarbon measurement of 500 parts per million (ppm) or higher for the Gasoline Analytical Group or 50 ppm or higher for the Kerosene Analytical Group, as defined by the DEP rule, must not exist onsite as a result of a release of petroleum products;
 - Contamination remaining at the site must not adversely affect adjacent surface waters includes the effects of those waters on human health and the environment;
 - The area of groundwater contamination to be confined to the source property or migrated to a FDOT facility; and
 - The groundwater contamination containing the petroleum products' chemicals of concern is not a threat to any permitted potable water supply well.
- Specifies the issuance of a Site Rehabilitation Completion Order acknowledges that minimal contamination exists onsite and the contamination is not a threat to human health, safety, or welfare, water resources, or the environment; and
- Specifies a site is still eligible for state-funded rehabilitation if the DEP determines the discharge may pose a threat after the Site Rehabilitation Completion Order is issued.

CS by Environmental Preservation and Conservation on March 11, 2015:

- Expands the Abandoned Tank Restoration Program (ATRP) by removing the June 30, 1996, reporting deadline;
- Removes the provision that a property owner of a site in the ATRP must provide evidence that he or she had a complete understanding of ownership and use of the property prior to acquisition;
- Deletes the requirement for the Department of Environmental Protection (DEP) to establish standards and criteria for benzene in specific situations;
- Allows a property owner to approve the use of Risk-Based Correction Action (RBCA) principles in remediating a discharge;
- Requires a site owner to approve work stoppages;
- Deletes the requirement for current and future operations and management of remediation systems to be performance based contracts;
- Allows the DEP to negotiate a contract based on the best available rate from a pool of three agency term contractors selected by the property owner or responsible party;
- Deletes the provision that allows a property owner to select a contractor if the amount of the cost share and the discount off the normal rate totals at least five percent of the value of the contract;
- Requires the agency term contractor and the property owner or responsible party to submit a sworn affidavit to the DEP that neither party has solicited, offered, accepted, paid, or received any compensation, remuneration, or gift of any kind in exchange for selection of the agency term contractor;
- Requires the agency term contractor to disclose any conflict of interest to the DEP and allows the DEP to terminate a contract if the DEP determines there is a potential conflict of interest;

- Allows a site to qualify for the low-scored site initiative (LSSI) if the source boundary is greater than one-quarter acre and located below a state road or a state road's right-of-way;
- Increases the funding for the site assessment and six months of groundwater monitoring for a site in the LSSI from \$30,000 to \$35,000;
- Authorizes the DEP to approve an additional \$35,000 for interim source removal of a site in the LSSI in order to achieve No Further Action status or receive a site rehabilitation completion order;
- Authorizes the DEP to approve an additional \$35,000 for a supplemental site assessment for sites assessed before July 1, 2015, in order to achieve No Further Action status or receive a site rehabilitation completion order;
- Specifies that only agency term contractors may participate in the LSSI;
- Requires that sites completed in the LSSI must be granted priority two scoring status for ongoing assessment or remedial activity;
- Requires that all work in the LSSI must be completed nine months after the DEP approval;
- Allows the DEP to authorize an additional six months of groundwater monitoring if the supplemental site assessment determines it is warranted;
- Removes the requirement that a discharge must have occurred before January 1, 1999, to qualify for the (Petroleum Cleanup Participation Program (PCPP));
- Allows a property owner or responsible party to enter into a voluntary cost share agreement for bundling multiple sites and to provide a list of the sites to be included in future bundles;
- Specifies sites that are to be included in a future Advanced Cleanup Program bundle are not subject to the agency term contractor assignment pursuant to rule; and
- Allows the DEP to terminate the voluntary cost share agreement if the application to bundle multiple sites is not submitted during the open application period.

B. Amendments:

None.